Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1979
No. 79-1141

MIGUEL ANGEL MORA,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA DISTRICT COURT OF APPEAL, FIRST DISTRICT

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IN THE

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MIGUEL ANGEL MORA,
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STATE OF FLORIDA,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA DISTRICT COURT OF APPEAL, FIRST DISTRICT

Respondent prays that this Court will deny the petition for writ of certiorari heretofore filed seeking review of the opinion rendered by the First District Court of Appeal.

OPINIONS BELOW

On the 2nd day of June, 1978, the

trial court entered an order denying Petitioner's motion to suppress (Pet. App. D). On the 23rd day of February, 1979, the First District Court of Appeal per curiam affirmed Petitioner's judgment and sentence. *Mora v. State*, 368 So.2d 1377 (Fla. 1 DCA 1979) (Pet. App. A). On the 21st day of March, 1979, the First District Court of Appeal denied Petitioner's petition for rehearing (Pet. App. B). On the 25th day of October, 1979, the Supreme Court of Florida denied Petitioner's petition for writ of certiorari (Pet. App. C). The instant petition followed.

JURISDICTION

The jurisdiction of this Court is sought to be invoked by Petitioner under 28 U.S.C. § 1257(3). It is Respondent's position that the issues raised here are not such as should be reviewed by this Court. Petitioner has not presented this Court with a substantial federal constitutional question. Review by writ of certiorari is a matter of sound judicial discretion, and will be granted only where there are special and important reasons therefore. *See* Rule 19, *Rules of the Supreme Court of the United States; Ross v. Moffitt*, 417 U.S. 600 (1974).

QUESTION PRESENTED

Did Petitioner have and/or continue to have a "reasonable" and "legitimate" expectation of privacy when Eastern Airlines Employee Douglas Adams examined the contents of an unidentified bag to determine the ownership thereof, with Petitioner's consent and without any governmental involvement, found contraband within and thereafter summoned Officers Smith and Huffman to examine the contents of the bag?

STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Facts except for the following additions. Douglas Adams, an

agent for Eastern Airlines, testified vis-a-vis deposition that his supervisor, Marion Pate, told him to be on the look-out for Petitioner's bag which was reported "missing since 10:00 o'clock that morning." (R 35). The bag came in during the late afternoon but the "tag on the bag did not match the tag on the tracer [they] had initiated." (R 35). Moreover, "there was no identification on the outside of the bag." (R 37). Adams contacted Petitioner and "asked for a list of contents and if he minded if [they] would take a look at the bag to make sure it was his." (R 35). Petitioner gave Adams a list of the contents (R 35, 38). Adams "opened the bag

and found quite a number of pills and a little marijuana in there, plus the items that he had mentioned that were in the bag." (R 35-36, 39). Adams identified the substance contained in one baggie as marijuana (R 35-36, 44-45). Adams summoned Officer Smith of the Tallahassee Police Department *after* Adams found the baggies containing the pills and marijuana (R 36, 39). Moreover, Officer Huffman arrived and conducted his examination *after* Adams found the baggies containing the pills and marijuana (R 39-40, 42). (Deposition of Douglas Adams annexed in Appendix A.)

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

Petitioner objects to a warrantless "search" of his suitcase at the Tallahassee Airport. It is Respondent's position that the Fourth Amendment is not applicable in the case *sub judice*.

The Fourth Amendment gives protection only against unlawful governmental action. In *Burdeau v. McDowell*, 256 U.S. 456 (1921), this Court said:

> The Fourth Amendment gives protection against unlawful searches and seizures, and as shown in the previous cases, its protection applies to governmental action. Its origin and history clearly show that it

> was intended as a restraint upon the activities of sovereign authority, and was not intended to be a limitation upon other than governmental agencies; as against such authority it was the purpose of the Fourth Amendment to secure the citizen in the right of unmolested occupation of his dwelling and the possession of his property, subject to the right of seizure by process duly issued.

Id. at 475.

In defining governmental action, this Court has said:

> So long as he [federal agent] was in it [the search] before the object of the search was completely accomplished, he [federal agent] must be deemed to have participated

> in it [the search].

Lustig v. United States, 338 U.S. 74, 79 (1949). However, "[w]here no official of the federal government has any connection with a wrongful seizure, or any knowledge of it *until after the fact*, the evidence is admissible." (Citations omitted.) *United States v. Mekjian*, 505 F.2d 1320, 1327 (5th Cir. 1975). (Emphasis supplied) This same principle has been announced in *United States v. Lamar*, 545 F.2d 488, 490 (5th Cir. 1977), *cert. denied*, 430 U.S. 959 (1977):

> Thus, if a search is conducted by a private individual, for purely private reasons, it does not fall within the protective ambit of the Fourth Amendment, *United States v. Maxwell*, 5

Cir., 1973, 484 F.2d
1350, 1352.

Id. at 490.

In *State v. Bookout,* 281 So.2d 215 (Fla. 4 DCA 1973), the Court applied the above-stated principles to a factual situation similar to the facts presented *sub judice.* In *Bookout,* an airplane landed at the Orlando terminal and discharged passengers and baggage. All luggage was claimed except one which was inscribed with the initials J.M.H., but had no other visible identification as to the name and address of the owner. Pursuant to a procedure normally followed in attempting to ascertain the name and address of unclaimed luggage, the baggage

service manager for the airline took the suitcase from the baggage claim area, and accompanied by another employee of the airline, proceeded to open the suitcase. Upon opening the suitcase, the airline employee found, *inter alia,* a number of traveler's checks, all with different names on them. Upon making this discovery, the airline employee called the local office of the F.B.I., and this agency, having examined the evidence, called the Orlando Police Department. The following morning, the police were at the air terminal building to inventory the contents of the suitcase. In response thereto, the Court concluded:

> In the case before us, the unlocked suitcase

> had arrived on a flight as personal luggage with *no name or identification* tag on the outside, and had *remained unclaimed* for more than an hour after its arrival at the baggage area. The *luggage was opened in accordance with the airline's policy to promptly ascertain the owner of any luggage which is apparently lost or abandoned.* This is clearly a case of a search by a private individual for a wholly legitimate and proper purpose, and not a search performed for the benefit or with the knowledge of any government official. It has been consistently held that the Fourth Amendment protection against unreasonable searches and seizures applies only in cases involving governmental action, and does not afford protection against searches and seizures made by a

> private individual. . . .

Id. at 216 (Emphasis supplied). *Cf. United States v. McDaniel*, 574 F.2d 1224, 1226-1227 (5th Cir. 1978), *cert.denied*, 99 S.Ct. 2181 (1979); *United States v. Echols*, 477 F.2d 37 (8th Cir. 1973), *cert.denied*, 414 U.S. 825 (1973).

Further, in *Barnes v. United States*, 373 F.2d 517 (5th Cir. 1967), a "search" was conducted by "the owner of a motel in which [the defendant] stayed overnight and in which he left behind a travel case containing the evidence complained of." *Id.* at 518. In *Barnes*, "[t]he search was made on the motel owner's own initiative. Because of it, he became suspicious, called the local police, informed them of

the bag's contents, and made it available to the authorities." The Court concluded:

> The fourth amendment and the case law applying it do not require exclusion of evidence obtained through a search by a private citizen. Rather, the amendment only proscribes governmental action. [Citations omitted.] Clearly the search complained of here did not involve governmental action and was therefore not illegal within the meaning of the fourth amendment.

Id. at 518. *Cf. Berger v. State*, 150 Ga. App. 166, 257 S.E.2d 8 (Ct.App. 1979), *cert.denied*, 26 CrL 4233 (March 17, 1980, U.S.S.C. Case No. 79-854).

Sub judice, Petitioner concedes that the initial examination conducted by the

employees of Eastern Airlines was outside the scope of the protection afforded by the Fourth Amendment. Petitioner's concession finds ample support in the record for Douglas Adams, an agent for Eastern Airlines, testified vis-a-vis deposition, that his supervisor, Marion Pate, told him to be on the lookout for Petitioner's bag which was reported "missing since 10:00 o'clock that morning." (R 35). The bag came in during the late afternoon but the "tag on the bag did not match the tag on the tracer [they] had initiated." (R 35). Moreover, "there was no identification on the outside of the bag." (R 37). Adams contacted Petitioner and "asked for a list of contents and if he minded if [they]

would take a look at the bag to make sure it was his." (R 35). Petitioner gave Adams a list of the contents (R 35, 38). Adams "opened the bag and found quite a number of pills and a little marijuana in there, plus the items that he had mentioned that were in the bag." (R 35-36, 39). Adams identified the substance contained in one baggie as marijuana (R 35-36, 44-45). Adams summoned Officer Smith of the Tallahassee Police Department *after* Adams found the baggies containing the pills and marijuana (R 36, 39). Moreover, Officer Huffman arrived and conducted his examination *after* Adams found the baggies containing the pills and marijuana (R 39-40, 42). (Deposition of Douglas Adams

annexed in Appendix A.)

It is Respondent's position that the examination of Petitioner's bag and discovery of the contraband by Douglas Adams was "completely accomplished" before any governmental action. *Lustig v. United States*, 338 U.S. 74, 79 (1949); *United State v. Sanders*, 592 F.2d 788, 792 (5th Cir. 1979), *cert.granted*, 62 L.Ed.2d 168 (1979); *Blanton v. United States*, 479 F.2d 327, 329 (5th Cir. 1973). The inquiry and examination was conducted on the employee's initiative with the consent of Petitioner and with the intent and purpose to ascertain the true owner(s) of the unidentified bag. *See United States v. Sherwin*, 539 F.2d 1, 6 (9th Cir. 1976)

(*En banc*) n.6; *United States v. Echols*, 477 F.2d 37 (8th Cir. 1973), *cert.denied*, 414 U.S. 825 (1973); *Gold v. United States*, 378 F.2d 588, 591 (9th Cir. 1967); *Barnes v. United States*, 373 F.2d 517, 518 (5th Cir. 1967) n.3.

Further, in *Rakas v. Illinois*, 439 U.S. 128 (1978), this Court stated in part:

> *Katz v United States*, 389 US 347, 19 L Ed 2d 576, 88 S Ct 507 (1967), provides guidance in defining the scope of the interest protected by the Fourth Amendment. In the course of repudiating the doctrine derived from *Olmstead v United States*, 277 US 438, 72 L Ed 944, 48 S Ct 564, 66 ALR 376 (1928), and *Goldman v United States*, 316 US 129, 86 L Ed 1322, 62 S Ct 993 (1942), that

> if police officers had not been guilty of a common-law trespass they were not prohibited by the Fourth Amendment from eavesdropping, the Court in *Katz* held that capacity to claim the protection of the Fourth Amendment depends not upon a property right in the invaded place *but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place*. 389 US, at 353, 19 L Ed 2d 576, 88 S Ct 507; *see United States v Chadwick*, 433 US 1, 7 53 L Ed 2d 538, 97 S Ct 2476 (1977); *United States v White*, 401 US 745, 752, 28 L Ed 2d 453, 91 S Ct 1122 (1971). . . .

Id. at 143 (Emphasis supplied). In *Katz v. United States*, 389 U.S. 347 (1967), Mr. Justice Harlan, in his concurring opinion, stated in part:

> My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as "reasonable."

Id. at 361.

Petitioner concedes that the initial examination made by Douglas Adams, Eastern Airlines Employee, was outside the scope of the protection afforded by the Fourth Amendment. It must also follow that Petitioner would concede that the Fourth Amendment would not have been implicated had Douglas Adams voluntarily turned the contraband over to the govern-

ment, for surely Petitioner would not quarrel that "it is no part of the policy underlying the Fourth and Fourteenth Amendments to discourage citizens from aiding to the utmost of their ability in the apprehension of criminals." *Coolidge v. New Hampshire*, 403 U.S. 443, 488 (1971). *See* (R 41). Rather, Petitioner argues that the subsequent inquiry and examination made by Officers Smith and Huffman constituted a warrantless search in violation of the Fourth Amendment. In *United States v. Bomengo*, 580 F.2d 173 (5th Cir. 1978), *cert.denied*, 439 U.S. 1117 (1979), the Court rejected the argument that for Fourth Amendment purposes a governmental view subsequent to a private search constituted a

new search. The Court stated in part:

> In *United States v. Blanton*, 5 Cir., 1973, 479 F.2d 327, and recently in *United States v. McDaniel, supra, we rejected the argument that for Fourth Amendment purposes a governmental view subsequent to a private search constituted a "new search".* In both cases airline employees opened unidentifiable, unclaimed baggage in an effort to determine ownership. In *Blanton* the defendant's baggage was found to contain a gun with a silencer. In *McDaniel* firearms and narcotics were discovered. *In both cases the bags were resealed and federal officers were notified of the discovery. The officers then reopened the bags.* We held in both cases that the initial search was valid because it was conducted by

> private citizens and that the subsequent view by the officers did not constitute a "separate or additional search", 574 F.2d at 1226; 479 F.2d at 328. *That the officers were required to reopen the baggage in order to inspect the contents was, under the circumstances, of no legal significance.*

Id. at 176 (Emphasis supplied).

Sub judice, Petitioner voluntarily placed his bag in the exclusive care and custody of the airlines. Having done same, Petitioner is charged with the knowledge that a responsible airline official might be required to examine the contents of the bag should the bag, for example, not contain proper identification from

without. In addition, if the airline official is required to examine the contents of an unidentified bag, then, as here, the party claiming ownership, here the Petitioner, assumes the risk that the official, upon finding what he suspects is contraband, will report and/or deliver same to the police. *Cf. Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *United States v. White*, 401 U.S. 745, 752 (1971); *Frazier v. Cupp*, 394 U.S. 731, 740 (1969).

It is Respondent's position that Petitioner did not have a "reasonable" and "legitimate" expectation of privacy when Douglas Adams examined the previously unidentified bag. Moreover, Petitioner did not have a "reasonable" and "legitimate" expectation of privacy when the police officers, who were summoned by Douglas Adams, conducted their subsequent inquiry and examination. What public policy is served if the contraband found inside Petitioner's bag is suppressed? What "official misconduct" does Petitioner wish to deter? The exclusionary rules were fashioned "to prevent, not to repair, and their target is official misconduct." *Coolidge v. New Hampshire, supra*, 403 U.S. at 488. The First District Court of Appeal properly affirmed Petitioner's judgment and sentence.

CONCLUSION

Based upon the foregoing, supported

by the authorities cited in argument and jurisdictional portions of this Brief, Respondent respectfully requests that this Court decline to assume jurisdiction in this case and deny Petitioner's application for issuance of a writ of certiorari.

Respectfully submitted:

JIM SMITH
Attorney General

GEORGE R. GEORGIEFF
Assistant Attorney
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CERTIFICATE OF SERVICE

I, GEORGE R. GEORGIEFF, *Counsel for Respondent*, and a member of the Bar of the United States, hereby certify that on the ____ day of April, 1980, I served copies of the Respondent's Brief in Opposition to the Petition for Writ of Certiorari on Murray M. Wadsworth, Esq., and William Howard Davis, Esq., of Thompson, Wadsworth, Messer and Rhodes, at Post Office Box 1876, Tallahassee, Florida 32302, *Counsel for Petitioner*, by a duly addressed envelope with postage prepaid.

GEORGE R. GEORGIEFF
Assistant Attorney
General

A P P E N D I X

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA.

STATE OF FLORIDA,	:	
Plaintiff,	:	
vs.	:	CASE NO. 78-83
MIGUEL ANGEL MORA,	:	
Defendant.	:	

FILED
MAR 17 3 57 PM 1978
PAUL F. ... JR.
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA.

DEPOSITION OF:	DOUGLAS L. ADAMS
TAKEN AT THE INSTANCE OF:	The Defendant
DATE:	Monday, March 6, 1978
TIME:	Commenced at 9:45 A.M. Terminated at 10:00 A.M.
PLACE:	Suite 608 Lewis State Bank Building Tallahassee, Florida
REPORTED BY:	SANDRA L. DiBENEDETTO, CSR, RPR Notary Public in and for the State of Florida at Large.

* * *

APPEARANCES:

Representing the Plaintiff:

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Post Office Box 1876
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* * *

I N D E X

NAME OF WITNESS:	PAGE NO.
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* * *

S T I P U L A T I O N

The deposition of DOUGLAS L. ADAMS, taken at the instance of the Defendant, on oral examination, pursuant to Notice, commenced at 9:45 A.M., on Monday, March 6, 1978, at Suite 608, Lewis State Bank Building, Tallahassee, Florida.

I HEREBY CERTIFY that this deposition was taken for the purpose of discovery, for use as evidence and for such other uses and purposes as may be permitted by the Florida Rules of Criminal Procedure and other applicable law; that the reading and signing of same by the witness is hereby waived; that all objections except as to the form of the question are reserved until the trial of this cause, and notice of filing said deposition is waived.

TAKEN BEFORE Sandra L. DiBenedetto, Certified Shorthand Reporter and Notary Public in the State of Florida at Large.

* * *

Thereupon,

DOUGLAS L. ADAMS,

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q Mr. Adams, my name is Bill Davis. This is Murray Wadsworth, and we represent Miguel Mora in this case. Would you state your name for the record.

A Douglas L. Adams.

Q And your occupation?

A I work with Eastern Airlines as an agent.

Q Are you familiar with the matter that we are here on today?

A Yes.

Q Could you just briefly tell us everything you know about it?

MR. MEGGS: Before you do, I am William Meggs and I represent the State.

THE WITNESS: Okay. Supervisor Pate told me before as I came on duty that afternoon to be on the lookout for Mr. Mora's bag since it had been missing since 10:00 o'clock that morning, I guess. And we were in the process of looking for it. And the bag came in the afternoon late. The tag on the bag did not match the tag on the tracer we had initiated. So, I called Mr. Mora and asked for a list of contents and if he minded if we would take a look at the bag to make sure it was his.

And when he gave a list of contents, I then opened the bag and found quite a number of pills and a little marijuana in there, plus the items that he had mentioned that were in the bag.

And Mr. Pate told me that Mr. Mora had told him

that he was under a doctor's care and there was some prescription medicine in the bag. But the pills or capsules that were in there were in a little plastic bag like you might put a sandwich in. And so, I called Officer Smith. There was marijuana in there as well. And he came over and looked at it, and he didn't know what it was. So, he called the narcotics man, which I guess was Officer Huffman, which he came out and looked at it and asked us if there was any way that we could ask this Mr. Mora to pick up his bag.

We told him we were obligated to deliver it, that it was company policy. And Mr. Pate then called Mr. Mora and told him we would deliver the bag that we had in our possession and that it would be 30 to 40 minutes before we could get it to him. And he said, "Hold it and I will come pick it up."

So, when I started out of the office to go to the coffee shop, someone walked up to the counter. And I asked him if I could help him and he produced himself as Mr. Mora and said he was looking for a bag. So, I went back inside and got his bag and sat it down on the counter.

He opened up the bag and said it was his and walked away from the counter. And I walked inside, and that was the last I saw of it.

BY MR. DAVIS:

Q When Mr. Pate asked you to look out for Mora's bag, did he describe it to you? How did you know it was his bag when it got there?

A We didn't. That's the reason I asked for the list of contents so that I could verify that it was his bag. It fit the description by color and by what we call type. But there was no identification on the outside of the bag and the tag on the bag was not the same one that he had given us.

Q How did it get to Tallahassee?

A By a circulous route. I understand Miami loaded it on a wrong flight because he was late checking in. And the best we could determine by the flight number was it went to New York and came back to Tallahassee.

Q And how do you think it finally made it to Tallahassee in the end? How was it sent here?

A It was sent back by what they call an expedite number. The original tag on it might have read Tallahassee, I don't know. But the original tag was not on it when it got back to Tallahassee.

Q And the people in New York identified it as belonging to Tallahassee somehow?

A Evidently by the tag number that was on it because, like I say, there was no identification on the outside of the bag.

Q Were you there when Mike Mora called and kept insisting, demanding his bag?

A Well, he called. I think I talked to him personally maybe three times that afternoon. He wanted his bag back.

Q And did Mr. Pate talk to him?

A That morning I understand he did, yes.

Q Was he rude to you?

A No. He was very insistent, but he wasn't rude, not to me.

Q Were you curious as to what was in the bag or why he was so insistent?

A No. I had no reason to be other than the fact that Mr. Pate said he had prescription medicine in there, which I didn't see.

Q What description of contents did Mr. Mora give to you?

A He listed or said that there were a couple of pullover sweaters or shirts. And I think he said maybe a couple of other shirts in there. But he did not mention the fact that there was a leather jacket on top and he didn't mention any prescription medicine or drugs or anything else. Of course, he wouldn't have, I guess.

Q When you opened the bag, did you see the sweaters?

A No, they were under the coat, the leather coat

which was on top. So, I had to lift the coat up and see what was under it.

Q And the sweaters that he described were there right underneath the coat?

A Yes, sir.

Q And the baggies were underneath the sweaters?

A No, they were in the back of the bag underneath the coat.

Q Underneath the coat. After you found the baggies, what did you do then in a little more detail?

A Well, I called Officer Smith to ask him if there was any way he could identify what it was. It wasn't prescription medicine and it was not in a prescription bottle of any kind. And there was a very large number of them.

Q And he said he didn't know what it was?

A Right.

Q The same with the other baggy; he wanted to call in a vice squad officer?

A Right.

Q So, after Officer Smith left, did you zip up the bag and wait for this other agent to arrive?

A We put it in what used to be the supervisor's room, yes.

Q What happened then when this other officer arrived; Officer Huffman, is that correct?

A I don't know what his name is. I just know he arrived. He asked to look at the contents of the bag, and I just opened the bag and he made his examination.

Q You unzipped the bag and opened it?

A Yes.

Q Had you repacked the bag pretty much the way it was?

A I didn't mess with it any way. I just lifted up the coat and maybe the edge of the sweaters. That's all.

Q So then Officer Huffman lifted up the coat and saw the drugs there?

A Right.

Q Okay.

A Well, he just moved it aside.

Q What did you tell Officer Huffman when he arrived?

A I just told him the bag belonged to a person that had filed a tracer on it, that it was missing, and we had it back in there.

Q Did you hear Officer Smith tell Officer Huffman anything about the bag?

A No.

Q Was Officer Smith there when the second officer came in?

A I believe he was.I think they came in together. I'm not sure. I was working for paper operations and answering

the phone and checking customers in and out.

Q Did you hear Officer Smith say, "There's something in there I want you to identify, or maybe you can tell what it is," or anything like that?

A No, sir, I didn't.

Q You said that your normal practice was to deliver the bag once you identified it, and that Officer Huffman asked you not to do that?

A Yes.

Q Did he tell you --

A Or he asked the supervisor, Mr. Pate. And Mr. Pate responded in the manner that it was company procedure that we are obligated to deliver the bag because it was misplaced by Eastern Airlines.

DIRECT EXAMINATION

BY MR. WADSWORTH:

Q I would just like to ask a couple of questions that I think probably have been covered, but to make sure I'm clear.

When you looked in the bag, you saw something, the items you described, that caused you to be suspicious. And so, you called -- contacted Officer Smith and asked him to come look -- contacted or notified him. That's your obligation, I assume?

A Right.

Q And he asked you to show him whatever it was you were talking about?

A Yes.

Q And you took him in and showed it to him?

A Well, the bag was opened when he came in. I just called him over the paging system.

Q At any rate, he came and looked, and he didn't know what it was either. So, he said he would call a vice squad officer and see if they could get an idea of what it was?

A Yes.

Q So, he called and Officer Huffman is the one who responded to that call?

A Yes. I don't know what his name was, like I say.

Q Okay. And so, when Officer Huffman arrived, Mr. Smith was either there or I think you said he may have arrived with him?

A I believe they came in together. I'm not really sure because that happened some time ago.

Q Okay. But at any rate, Smith was present when Officer Huffman arrived?

A Yes, he was.

Q And Officer Huffman asked to be shown what it was that you were talking about, and the bag was opened and he was shown the same thing that Smith had been shown?

A Yes.

Q Did Officer Huffman then indicate in your presence what he thought it was?

A No, sir.

Q Did he ask you to hold the bag for a period of time? Was there any conversation? Did he make any requests about holding the bag or anything of that nature?

A Well, he asked us to hold it if we could and ask Mr. Mora to pick it up, but we told him we can't, that it was not company policy.

Q Did he ask you to just hold it indefinitely, for instance, while he obtained a search warrant or anything? Was there any discussion of that nature?

A No.

Q Wouldn't have been any problem doing that, would there?

A Holding it?

Q Yes, sir. You could have just held it for an hour or two, could you not?

A Yes, but we -- the bag had been missing since 10:00 o'clock that morning and, you know, we try to get it to them as soon as we can once it's found.

Q Sure. I understand. But Mr. Mora was not standing there and demanding it, or anything like that?

A No.

Q You all, in fact, after talking with Officer

Huffman, you all called Mr. Mora at home and told him you had the bag; is that right?

A Yes.

Q And Officer Huffman was there when that call was made?

A I believe so, yes.

Q And then it was just a matter of waiting for Mr. Mora to come out there and pick up -- claim his bag?

A Right.

Q Had you ever seen any pills just like this before to your knowledge?

A No.

Q Had you ever seen anything that was known by you to be marijuana before?

A Yes.

Q When was that?

A When I worked in Atlanta, Georgia, in the baggage service department, and through the FEI and narcotics agent, I had seen some up there.

Q You seen some there that you had been told was marijuana?

A Yes.

Q And was identified as marijuana?

A Yes.

Q But you never worked in police work or vice work

or been trained in that area?

A No, sir.

Q And so, you didn't know what it was either then?

A Well, I had --

Q It was a matter of suspicion?

A Like I say, I had seen it in Atlanta and smelled it, you know, and it was the same. I am not that familiar with marijuana, no.

MR. WADSWORTH: Right. I don't have any further questions.

MR. MEGGS: Nothing from the State.

(Whereupon, the deposition was concluded at 10:00 A.M.)

* * *

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
:
COUNTY OF LEON)

I, SANDRA L. DiBENEDETTO, Certified Shorthand Reporter and Notary Public in and for the State of Florida at Large:

DO HEREBY CERTIFY that the foregoing deposition was taken before me at the time and place therein designated; that before testimony was taken the deponent was by me duly sworn; that my shorthand notes were thereafter reduced to typewriting under my supervision; and the foregoing pages numbered 1 through 14 are a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

WITNESS MY HAND AND SEAL this, the 14th day of March, A. D., 1978, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON, STATE OF FLORIDA.

Sandra L. DiBenedetto, CSR

SANDRA L. DiBENEDETTO, CSR, RPR
Suite 608, Lewis State Bank Building
Tallahassee, Florida 32301

My Commission expires: February 20, 1982.

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